

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos 57, 79 and 81 of 1995

in

SPECIAL CIVIL APPLICATION No 1769 of 1991

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VT MEHTA

Versus

IPCL

Appearance:

MR KC YAJNIK for Petitioner
MR DS NANAVATI for Respondent No. 1, 2

CORAM : THE ACTING CJ R.A.MEHTA and

ORAL JUDGEMENT

(Per Mehta, Actg. CJ)

The three appellants sought the benefit of voluntary retirement scheme from the respondent - Indian Petrochemical Corporation Limited and they were denied the said benefit and their resignations were accepted without retirement benefits. Therefore, they have preferred the petitions which have been dismissed by the learned Single Judge and therefore these three appeals.

2 The learned counsel for the appellants submits that all the three appellants fulfill the requirements of the eligibility of voluntary retirement scheme as they had completed 10 years of service.

3 The refusal to give the benefits of voluntary retirement scheme is challenged on two grounds, namely, (1) that reasons for refusal have not been recorded in writing; and (2) that the benefit of the scheme has been given to several other persons similarly situated and has been denied to the three appellants and therefore the denial is discriminatory.

4 It is true that the reasons are not recorded in writing at the time of rejection of the request for acceptance of voluntary retirement under the scheme and the reasons have been given in the affidavit-in-reply for the first time. The office memorandum dated 5th October 1988 and the Bureau of Public Enterprise of Government of India provides in clause (b) that the management of the enterprise will have the right not to grant voluntary retirement for reasons to be recorded in writing.

5 This office memorandum was issued "with a view to reducing surplus manpower" and the scheme provides as follows:

"The voluntary retirement Scheme would be applicable to all employes workers and executives where there is a surplus manpower, the vacancy ceased by Voluntary Retirement Scheme would not be filled up. Voluntary Retirement Scheme on the above parameters can be introduced by the Public Enterprises with the approval of the Administrative Ministries."

6 The learned Single Judge has observed that the respondent-corporation should have recorded the reasons

and communicated the same to the concerned employee. Recording of the reasons is a desirable thing and if the reasons are recorded contemporaneously the weight attached to those reasons is higher. Therefore, the act of not giving reasons at the relevant time cannot be approved. The learned Single Judge has also disapproved of the same.

7 The learned Single Judge has thereafter examined the reasons given in the affidavit-in-reply wherein it is stated that these are the reasons which weighed with the respondent-corporation while rejecting the applications of the petitioners for voluntary retirement.

8 The reasons were that after the scheme was in initial operation for some time in 1989, the market scenario was changed within a short time. The Government has granted more approvals for starting industries in petrochemical sector to various parties. With the advent of consideration of the Corporation's proposal for Gandhar Project and other projects at Baroda totalling in investment of over Rs.4,000 crore the Corporation needed senior officers to man high-level posts and in the context of change in the scenario new norms consistent with the spirit of the scheme were evolved and applied from January 1990 and the earlier liberal acceptance of voluntary retirement applications was made strict by providing that voluntary retirement may be granted in the case of an employee who is declared surplus and no substitute is asked for and therefore thereafter the voluntary retirement applications of the senior officers were not accepted and a list of 20 such officers has been given with the reply affidavit. They are at pages nos.56 and 57 of the paper book. It is thus not a case of pick and choose nor is it a case of rejection without reasons and therefore it cannot be said that the rejection has been arbitrary.

9 In these circumstances, the learned Single Judge held that no useful purpose would be served by striking down the action of the Corporation for not recording the reasons and it would be a futile exercise to send the matter back for reconsideration and reasons. We agree with that reasoning and hold that the Court would be justified in refusing to grant the discretionary relief under Article 226 of the Constitution of India of striking down the impugned order and issuing a futile writ for reconsideration and recording of reasons. Hence all these three appeals are dismissed. Notice in each of the matter is discharged.

(mohd)

